

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company :
(SBC Illinois) :
 : **04-0441**
Petition for Variance Pursuant to Part 735 :
of the Commission's Rules. :

ORDER

By the Commission:

I. Procedural History

On June 21, 2004, Illinois Bell Telephone Company ("SBC Illinois") filed with the Illinois Commerce Commission ("Commission") a petition seeking variance from the provisions of 83 Ill. Admin. Code Part 735.70(b)(1)(G), requiring it to provide detailed information about toll calls included on its customer bills.

Pursuant to due notice, hearings were held in this matter on July 13, August 12, and September 20, 2004, before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois. Appearances were entered by counsel on behalf of SBC Illinois and by a member of the Office of General Counsel of the Commission on behalf of the Commission Staff ("Staff"). The People of the State of Illinois ("Illinois AG") also filed a petition to intervene, which was granted on August 12, 2004.

Mr. David F. Becker, Director, Billing Product Manager for SBC Illinois, presented testimony and exhibits in support of the Petition. Ms. Joan S. Howard, a Consumer Program Analyst in the Consumer Services Division of the Commission, submitted a Verified Statement and testified on behalf of the Staff. The Illinois AG presented no witnesses. At the conclusion of the September 20 hearing, the record was marked "Heard and Taken."

SBC Illinois is a corporation organized under the laws of the State of Illinois and is a telecommunications carrier within the meaning of 220 ILCS 5/13-202. It owns and operates telecommunications facilities, and provides intrastate local exchange and intraLATA interexchange telecommunications service, in its service area within the state.

SBC Illinois is a "telephone company" under the jurisdiction of the Commission within the meaning of 83 Ill. Admin. Code Sec. 735.30 of the "Procedures Governing the Establishment of Credit, Billing, Deposits, Termination of Service and Issuance of

Telephone Directories for Local Exchange Telecommunications Carriers in the State of Illinois," 83 Ill. Admin. Code Part 735.

II. Parties' Positions

SBC Illinois' Position

SBC Illinois seeks a variance from the toll billing provisions in 83 Ill. Admin. Code Section 735.70(B)(1)(G) in order to implement a billing option under which certain customers could choose to have information about toll calls suppressed from their bills. In particular, interested residential and business customers who have purchased packages that include unlimited toll calling could elect to stop receiving detailed information about calls included in those calling packages.

Mr. Becker testified that, under the current SBC Illinois bill format, detailed information on local toll and long distance calls is presented, including the date and time of the call, the place called (the destination), the telephone number called, the length of the call in minutes, and the charge (collectively, "call detail"). Under this format, the charge for each call included as a part of an unlimited plan is shown as \$0.00 because there are no per-call charges that apply. SBC Illinois Ex. 1, Schedule 1, provides an example of the current billing format for unlimited calling plans. The current format does not designate which calls are local toll, as opposed to long distance, calls. Mr. Becker explained that, unless a customer knew the boundaries of her local toll calling area, the customer probably would be unable to determine exactly how many calls of each type she made in a given month.

Mr. Becker also testified that, under SBC Illinois' proposed billing format, customers with an unlimited calling plan who choose to have their call detail suppressed will receive, as part of their bill each month, a usage summary, giving the total number of calls made and the total number of minutes used during the preceding billing period. Only zero-rated calls (i.e., calls for which the charge is shown as \$0.00) that are part of the unlimited plan will have the call detail suppressed and be included in the summary. Local toll or long distance ("toll/LD") calls that are outside the customer's unlimited plan, such as international calls or credit card calls, will continue to be displayed on the bill with all of the detail that is displayed today. SBC Illinois Ex. 1, Schedule 2, provides an example of the billing format that SBC Illinois proposes to introduce for customers electing suppression of call detail.

Mr. Becker explained that those customers with unlimited calling plans that do not elect to suppress their toll/LD call detail will continue to receive the listing of the calls, as they do today, even though each call will be zero-rated. He also testified that a customer who chooses toll/LD suppression could change this election at any time and, on a going forward basis, receive the call detail associated with her unlimited toll/LD calls. A customer who has selected SBC Long Distance as her interexchange carrier may also ask SBC to retrieve and provide toll/LD detail for the prior 24-month period (at least) in the event she wishes to see the calls that were made in a particular month.

There would be no additional charge for requesting previous bills with toll/LD usage in detailed format, and there would be no charge for turning the detail back on at any time should the customer request it.

According to Mr. Becker, SBC developed the toll suppression option as a result of customer research it conducted throughout its service territory, including focus groups held in Chicago. This research revealed that customers prefer a bill that is simple and is as close to one page as possible. The surveyed customers indicated that, to achieve a shorter bill, they were willing to forego the call detail for calls included in an unlimited calling plan.

Mr. Becker explained that the suppression option would provide benefits both to customers and to SBC Illinois. Customers who do not want to receive their call detail would benefit because they could choose the suppression option and no longer receive the detail. SBC Illinois would benefit because having the suppression option available would allow it to produce a shorter bill and thus to satisfy customers who want such a bill.

Section 735.70(b)(1)(G) requires local carriers that include charges for toll calls on their bills to itemize those calls. The section also lists specific information about toll calls that the carriers must include, such as the date and time of the call, the length of the call, the telephone number called, and the destination called. Mr. Becker testified that a variance from Section 735.70(b)(1)(G) would be necessary for SBC Illinois to offer the suppression option because customers selecting that option would no longer receive the specified call detail information.

Mr. Becker explained that SBC had to seek a rule waiver to offer the suppression option in several other states in its service territory and that the utility commissions in those states (Kansas, Ohio, Oklahoma, and Wisconsin) had approved the waiver requests. He added that California amended its Public Utilities Code to require local exchange carriers to give customers with unlimited calling plans the option of deciding whether to receive their call detail. He also testified that Cingular Wireless currently provides its customers with unlimited calling plans the option of suppressing the itemization of calls.

SBC Illinois framed its variance request with regard to unlimited calling plans that customers purchase from SBC Illinois, including SBC Long Distance toll plans for which SBC Illinois provides billing under a Billing and Collection ("B&C") agreement. Mr. Becker stated, however, that SBC Illinois was willing to offer call detail suppression to its end-user customers who use an interexchange carrier ("IXC") other than SBC Long Distance, as long as the following conditions exist: 1) the IXC has a B&C agreement with SBC Illinois through which the IXC bills its customers; 2) the IXC offers unlimited calling plans to its customers and wants to offer those customers the option of suppressing call detail; 3) the IXC agrees to retrieve and provide, for customers who request it, past toll/LD detail for at least 24 months of previous bills; and 4) the variance

granted by the Commission is phrased broadly enough to be applicable to SBC Illinois' billing of unlimited calling plans on behalf of SBC Long Distance or any other IXC.

Staff's Position

Ms. Howard, in her Verified Statement on behalf of Staff, testified that Staff finds many of SBC Illinois' reasons for requesting the waiver to be well founded. First, Ms. Howard emphasized that the variance is available as an *option* at the request of the SBC Illinois' local customer. Second, she noted that the waiver is applicable only to bills of SBC Illinois local customers who have purchased Unlimited Toll/LD Packages at a flat rate. Third, and critically important in the Staff's view, the SBC Illinois local customer would have the *option* to request suppression of call detail for Unlimited Toll/LD Packages and at any time, without charge, retain the *option* to change their prior request and return to receiving call detail on a going forward basis. These factors, in the Staff's view, all mitigate in favor of granting SBC Illinois' requested variance. Staff Ex. 1.0 (Howard), at 4.

Ms. Howard, however, noted that the Staff had certain concerns regarding SBC Illinois' requested variance. Due to these concerns, Staff conditioned a favorable Staff recommendation to the Commission upon SBC Illinois agreeing to the following conditions. First, in order to allow SBC Illinois' customers who purchase Unlimited Toll/LD Packages to switch from call detail suppression back to receiving call detail, and to allow customers to evaluate their telecom usage for any given month or to compare months of usage, the Staff proposed that SBC Illinois or the applicable IXC other than SBC Long Distance retain the call detail data, including usage data, for at least 24 months. See Staff Ex. 1.0 (Howard), at 4.

Second, Staff was concerned that SBC Illinois local customers that have an IXC other than SBC Long Distance would not be offered the same call detail suppression options as the end user customer that has SBC Illinois as its local carrier and SBC Long Distance as its IXC. Staff Ex. 1.0 (Howard), at 4-5. The Staff, therefore, conditioned a favorable recommendation upon a commitment by SBC Illinois to offer call detail suppression to its end-user customers that use an IXC other than SBC Long Distance. *Id.*, at 5. In addition, the call detail suppression should be the same as what SBC Illinois provides to end-user customers that have SBC Illinois as its local carrier and SBC Long Distance as its inter-exchange carrier. *Id.* Staff understood that SBC Illinois could meet this condition by notifying the IXCs with whom they have billing and collection agreements ("B&C agreements") that SBC Illinois will be offering this option to IXCs (and their end-users) that renegotiate the applicable B&C agreement, if needed. *Id.*

As noted above, in order to address the concerns of Staff, SBC Illinois agreed to Staff's proposed conditions under Staff agreed upon circumstances consequently, in light of SBC Illinois agreement with Staff's conditions, Staff recommended to the Commission that it grant the variance requested.

Staff, while noting that it does not agree with the AG that consumers will be harmed by this proposed waiver, agreed with the AG that consumers should be able to access information about local toll calls and long distance calls so they can comparison shop for phone services. Staff concluded that such information can be acquired by the consumer under Staff's proposed conditions.

Attorney General's Position

The AG questions whether the summary information and call detail suppression SBC Illinois requests meet its goal of simpler bills. The AG argues that call detail can be deleted from billing without harming consumers, but that SBC Illinois' proposal to delete all call detail would remove important information from consumers' bills, and prejudice their ability to understand both their bill and their telecommunications needs and options. Therefore, the AG recommends approval of the company's request only if the summary information provided is modified to better reflect the services SBC Illinois includes in its unlimited plans.

The AG recommends that, to prevent harm to consumers, SBC Illinois' variance should be allowed only if: 1) the bill displays each category of service separately (local usage, local toll [intraLATA] and long distance [interLATA]); 2) the minutes and number of calls under each category are separately displayed; and 3) the charges for each category of service are displayed alongside the itemization of the usage. The AG argues that the summary the SBC Illinois proposes does not accurately reflect the services customers are using because it combines local toll and long distance into a category named "domestic" usage, which masks the fact that two services are being provided.

The AG is concerned that in the event that consumers want to shop, compare prices, or understand their calling pattern so they can shop intelligently, the summary SBC Illinois proposes to provide is insufficient. Rather than reviewing current bills, a consumer would have to reverse its waiver request, wait for receipt of its prior usage history, or review only its prospective usage and postpone making a decision or a change. The AG suggests that changing the summary information to reflect local toll usage and long distance usage separately would resolve the problem it has identified while allowing SBC Illinois to omit the call detail for which no separate charge is incurred. Further, the AG noted that the price for the unlimited local toll and long distance calling was not clearly stated on the bill, and recommended that the cost of that unlimited usage be displayed with the summaries.

Without the modifications it suggests, the AG argues that the SBC Illinois proposal could potentially harm customers because they will lose the ability to assess their calling pattern and to make informed choices for their service. Likewise, the AG argues that the company has failed to provide evidence that the current rule is "unreasonable or unnecessarily burdensome." 83 Ill. Adm. Code 735.50(c). Finally, the AG asserts that waivers by regulatory bodies in other states are neither precedent nor

persuasive, as potential harm to Illinois consumers was not at issue in those proceedings.

III. Commission Analysis and Conclusions

After reviewing SBC Illinois' proposed waiver and the conditions and modifications proposed by Staff and the AG, we conclude that the Commission must ensure that Illinois consumers have the information necessary to successfully understand and secure for themselves the full benefits of today's competitive telecommunications marketplace. Therefore, we approve SBC Illinois' proposal, with conditions and modifications as outlined below.

We agree with the modifications recommended by the Staff and accepted by SBC Illinois: 1) the call detail suppression option will be made available to any SBC Illinois local customer, regardless of the customer's IXC or toll carrier, and 2) SBC Illinois customers who have selected the call detail suppression option can at any time obtain 24 months of past call detail, at no charge, upon request.

Section 735.50 requires that the Commission, before granting a variance, consider three criteria: 1) whether the rule from which a variance is requested is mandated by statute; 2) whether anyone would be harmed by granting the variance; and 3) whether the rule from which a variance is requested is unduly burdensome.

None of the participants in this docket – SBC Illinois, Staff, or the Illinois AG – has identified any statutory requirement to present call detail on a customer's bill. The Commission also knows of no such requirement. Accordingly, the first criterion is satisfied.

The primary dispute between the parties relates to the second criterion. The AG contends that customers would be harmed under the new SBC Illinois bill format because they would not have information that might be necessary to understand their bills and to make appropriate decisions about telecommunications service. However the AG's proposed solution, providing summary information about local and long distance calling does not solve the problem. Charges are based on local toll and interlata rates based upon geographic boundaries that don't necessarily correspond to area codes or the distance between parties to the call. The call detail provided with the current bill format includes the number and destination called, but it does not designate whether a given call is local toll or long distance. (Indeed, subsection 735.70(b)(1)(G) contains no requirement that toll calls be categorized on the bill as local toll or long distance.) Thus, as Staff points out, this proceeding (a petition for a variance from an existing rule) is not the correct forum to impose new obligations on SBC not encompassed by that rule.

The record indicates that most customers would be unable to determine with certainty which of their intrastate toll calls in a given month were local toll calls versus interLATA long distance calls. As a result, to the extent that the new bill format takes

any information away from customers, providing the AG's suggested summary would not have a meaningful impact on customer decision-making.

SBC argues that suppression of call detail would be available only to customers with unlimited toll calling plans, so that only a subset of customers would be eligible for suppression if the waiver were granted. Further it points out that suppression would be optional, so that only customers with unlimited calling plans who choose not to receive the call detail would experience any effect if the waiver were granted. Moreover, any conceivable harm that a customer choosing suppression might experience would be entirely self-inflicted and reversible because a customer who had requested suppression could simply ask SBC Illinois to provide the detail from prior months or to provide the detail going forward.

The variance as proposed does not take into account that a flat-rated customer that has chosen call detail suppression may not remember or understand that the suppression is reversible and that detail information is available. Over time a customer's telephone usage pattern may change. A flat rate calling plan with summary billing that made sense initially may stop being a good idea. For this reason we find it appropriate that flat rated customers be advised in writing, prominently displayed on each bill, that he or she may obtain bill detail in writing by calling and requesting same from a designated number.

Subject to the conditions suggested by the Commission and Staff mentioned above, we find there is little likelihood that any party would be harmed if SBC Illinois offered the option of suppressing call detail. Therefore, we find that the second criterion is satisfied.

Finally, we find that Section 735.70(b)(1)(G) is burdensome, in that it precludes SBC Illinois from offering billing innovations such as the suppression of call detail. Section 735.70(b)(1)(G) assumes that a customer will be charged separately for each toll call she makes and thus might want details about each call to determine if she has been billed correctly. Now that many telecommunications carriers, including SBC Illinois, offer calling plans that include unlimited calling for a flat monthly rate, the average customer subscribing to such a plan may have little interest in details about particular calls because there is no separate charge for calls included in the plan. The code provision thus is unduly burdensome, in this particular situation, because it prevents SBC Illinois from offering the toll suppression option to interested customers. The third criterion is satisfied.

IV. Findings and Ordering Paragraphs

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) SBC Illinois is engaged in the business of rendering telecommunications service and is a telecommunications carrier as defined in Section 13-202 of the Public Utilities Act;

- (2) the Commission has jurisdiction over SBC Illinois and the subject matter of this proceeding;
- (3) the recitals of fact set forth in the prefatory portion of this order are supported by the evidence of record and are hereby adopted as findings of fact;
- (4) the provisions in 83 Ill. Admin. Code 735.70(b)(1)(G) from which variance is sought are not statutorily mandated;
- (5) no party will be injured by the granting of the variance;
- (6) the application of Section 735.70(b)(1)(G) would be unreasonable and unnecessarily burdensome in this particular situation;
- (7) the granting of a variance to allow SBC Illinois to offer suppression of toll call detail to interested residential and business customers who have unlimited toll calling plans is reasonable and consistent with the public interest in light of the following conditions;
- (8) as a condition of granting said variance SBC Illinois will be required to state prominently on each bill of a flat rated customer that has affirmatively requested call detail suppression that the customer may obtain 24 months written call detail without cost by calling a designated number;
- (9) as a further condition of granting this variance, SBC shall provide notice requesting that IXCs and toll carriers make their customers (for whom SBC provides local service) call detail information available to SBC when a customer requests call detail information;
- (10) as a further condition of granting this variance, SBC shall make the suppression option available to any of its local service customers, regardless of the customer's IXC or toll carrier, by providing notice to carriers that have entered into billing and collection agreements with SBC Illinois of the suppression option and that SBC will make available 24 months of past call detail upon request without cost to any call suppression option customer; provided the IXC or toll carrier agrees to provide, and actually does provide, such information to SBC;
- (11) approval is be granted to SBC Illinois for a variance from the provisions in 83 Ill. Admin. Code 735.70(b)(1)(G) that require itemization of toll calls for customers who have unlimited calling plans;
- (12) the variance is applicable to SBC Illinois' billing of toll calls under an unlimited toll calling plan for any interexchange carrier, pursuant to a

billing and collection agreement and subject to the conditions described herein regarding the availability of past call detail;

- (13) the variance should be granted on a permanent basis, to remain in effect until the Commission ceases or suspends authority for the variance in a docket initiated on its own motion or pursuant to a complaint;
- (14) subject to the terms and conditions of this Order, the prayer of the petition may be reasonably granted and the public will be inconvenienced thereby; and
- (15) any objections, motions or petitions filed in this proceeding, which remain undisposed of should be disposed of in a manner consistent with the ultimate conclusions herein contained.

IT IS THEREFORE ORDERED that SBC Illinois is granted a variance from the provisions in 83 Ill. Admin. Code 735.70(b)(1)(G) requiring itemization of all toll calls for all customers.

IT IS FURTHER ORDERED that the variance granted above is applicable only to business and residential customers of SBC Illinois who have subscribed to an unlimited toll calling plan and who have affirmatively requested to have their call detail suppressed.

IT IS FURTHER ORDERED that the variance is granted on a permanent basis, to remain in effect until the Commission ceases or suspends authority for the variance in a docket initiated on its own motion or pursuant to a complaint.

IT IS FURTHER ORDERED that any objections, motions, or petitions not previously disposed of are hereby disposed of consistent with the findings of this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 2nd day of February, 2005.

(SIGNED) EDWARD C. HURLEY

Chairman